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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057462
Party	Defendant Evolv Health, LLC
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Date	09/08/2014
Attachments	Answer - EVO2LV.pdf(33730 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CytoSport, Inc.	)	
	)	
	)	Cancellation No.: 92057462
	)	
v.	)	Registration No.: 3,842,462
	)	
Evolv Health, LLC	)	Mark: EVO2LV & design
	)	
Respondent.	)	

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**ANSWER**

Respondent Evolv Health, LLC ("Respondent"), through its undersigned counsel, hereby answers the Petition For Cancellation of Petitioner CytoSport, Inc. ("Petitioner"). Respondent answers the numbered allegations of the Petition For Cancellation as follows. Unless expressly admitted herein, each allegation contained in the Petition for Cancellation is denied:

1. Respondent answers that Evolv Health, LLC is a Delaware limited liability company, not a corporation, but otherwise admits the allegations of paragraph 1.
2. Respondent admits that it owns Registration No. 3,842,462 for the mark EVO2LV in a stylized format, and that the registration recites the goods "nutritionally fortified beverages for use as ergogenic aids" in International Class 5.
3. Respondent admits the allegations of paragraph 3.
4. Respondent admits that the date of first use in commerce of the EVO2LV mark, on the goods in Registration No. 3,842,462, is at least as early as July 2009.

5. Respondent lacks information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 5, and therefore denies those allegations.

6. Respondent lacks information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 6, and therefore denies those allegations.

7. Respondent admits only that USPTO records show an assignment recorded to Petitioner for Application No. 85/676,705 for the mark EVOLVE and therefore that USPTO records list Petitioner as the owner of such application/registration; and that this application was published and is now registered; and that it recites the goods "Dietary and Nutritional Supplements " in International Class 5. Respondent lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 7, and therefore denies those allegations.

8. Respondent admits only that USPTO records show Petitioner as owner of pending U.S. Trademark Application No. 85/708,932 for the mark EVOLVE, and that such application recites "meal replacement drinks and pre-mixed nutritionally fortified beverages" in International Class 32. Respondent lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 8, and therefore denies those allegations.

9. Respondent admits the allegations of paragraph 9.

10. Respondent lacks information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 10, and therefore denies those allegations.

11. Respondent lacks information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 11, and therefore denies those allegations.

12. Respondent lacks information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 12, and therefore denies those allegations.

13. Respondent denies the allegations of paragraph 13.

WHEREFORE, having fully answered the Petition For Cancellation, Respondent prays that the Cancellation be dismissed, with prejudice, and for such other and further relief as the Trademark Trial and Appeal Board may deem just and proper.

Respectfully submitted by:

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

By: /Charles G. Zug/

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*Attorneys for Respondent Evolv Health, LLC*

Columbia, South Carolina  
September 8, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **ANSWER** has been served on CytoSport, Inc., by causing such copy to be e-mailed (e-mail service being agreed by the parties), on September 8, 2014 to the attorney of record for Petitioner CytoSport, Inc.:

Eric E. Westerberg, Esq.  
Thorpe North & Western LLP

Email: eric.westerberg@tnw.com, kelley.warner@tnw.com,  
docket@tnw.com

Dated: September 8, 2014

/Charles G. Zug/

Charles G. Zug